

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
: 19-CR-00576 (BMC-1)
v. :
: February 28, 2020
GENARO GARCIA LUNA, :
: Brooklyn, New York
:
Defendant. :
:
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL APPLICATION
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 (Proceedings began at 2:59 p.m.)

2 THE CLERK: Criminal Cause for a Bail Application for
3 case No. 19-CR-576, USA v. Luna. Counsel, please state your
4 appearance for the record.

5 MR. ROBOTTI: Good afternoon, Your Honor. Michael
6 Robotti for the United States.

7 THE COURT: Good afternoon.

8 MR. DeCASTRO: Good afternoon, Judge. Cesar DeCastro
9 for Mr. Garcia Luna who's standing to my left.

10 THE CLERK: Previously sworn Spanish interpreter also
11 present.

12 THE COURT: Is it working?

13 THE CLERK: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. ROBOTTI: Judge, I'd like to start by addressing
16 an issue that was raised yesterday. I wasn't here yesterday.
17 Ms. Reid was here. But my understanding is that defense
18 counsel represented that Mr. Garcia Luna had paid rent on the
19 mansion that he owned in South Florida once he moved to the
20 United States. Mr. Luna said to the Government during his post
21 arrest statement that he lived there rent free. So the
22 Government would like to hear from the defense whether it is
23 the position that Mr. Garcia Luna lied to the Government during
24 his post arrest statement because we think that's highly
25 relevant to the fact as to whether Mr. Garcia Luna will stand

1 by his word to the Court that he is going to show up for his
2 court appearances when he signs this bond.

3 THE COURT: All right. So specifically what was the
4 statement that he made that you believe is untruthful?

5 MR. ROBOTTI: He said that he lived at this residence
6 rent free and yesterday defense counsel said the exact
7 opposite.

8 THE COURT: Okay. And which residence is that?

9 MR. ROBOTTI: It's the residents at 274 South Island
10 Drive.

11 THE COURT: In?

12 MR. ROBOTTI: In Golden Beach, Florida.

13 THE COURT: And who does it belong to?

14 MR. ROBOTTI: It was owned by a corporation that
15 purchased it in 2012. Our position is that that corporation
16 purchased it on behalf of Mr. Garcia Luna. It's a \$3.3 million
17 5,900 square foot residence.

18 THE COURT: And it belongs to the corporation at this
19 time?

20 MR. ROBOTTI: No, it was sold in 2016.

21 THE COURT: Sold in 2016. And where did the proceeds
22 of the sale go?

23 MR. ROBOTTI: The Government doesn't have that
24 information, Your Honor. My understanding from the interview
25 with Mr. Luna's wife is that their contention is it went to the

1 corporation.

2 THE COURT: Okay. Does he have any interest in the
3 corporation at this time?

4 MR. ROBOTTI: His name is not on the corporate
5 documents, Your Honor. But our understanding is, you know, he
6 was involved in the selection of that property while he was
7 still in office in Mexico in 2012. And I suppose that's
8 another issue we should address about his post arrest
9 statement, Your Honor, is that in his post arrest statement to
10 the Government, Mr. Luna said that he was not involved in
11 selecting that property, he didn't know when it was purchased.
12 We interviewed one of Mr. Garcia Luna's suretors today, Ivan
13 Ramirez, who recalls in fact that Mr. Garcia Luna was involved
14 in the selection of that property prior to the purchase. We've
15 also interviewed the prior owner of that property who recalls
16 that Mr. Garcia Luna and his family were involved in the
17 selection of that property prior to its purchase. So again
18 here now we have Mr. Garcia Luna making a statement that is
19 directly contradicting a statement that one of his proposed
20 suretors is making. So the Government again would like to know
21 whether it's Mr. Garcia Luna's position that he lied during his
22 post arrest or that his proposed suretor is lying to the
23 Government about what happened during the course of the sale.

24 THE COURT: And what is -- in addition to the alleged
25 untruthfulness, is there other significance to the answer to

1 that question?

2 MR. ROBOTTI: About whether or not that --

3 THE COURT: He was involved in the purchase.

4 MR. ROBOTTI: Yes, Your Honor, because one of the
5 contentions that Mr. Garcia Luna is making is that he does not
6 have access to sufficient funds. And it is our position that
7 he does in fact have access to funds in the names of other
8 people. For instance, this property, this \$3 million property
9 was purchased on behalf of he and his family under the name of
10 a corporation that he is not tied to on any corporate
11 documents. This same corporation bought Mr. Garcia Luna a
12 \$700,000 yacht that same year for his exclusive use. In
13 addition to that, there are other payments that have been made
14 in the names of third parties that have gone to benefit Mr.
15 Garcia Luna. For instance, one of Mr. Garcia Luna's proposed
16 suretors is Caesar Geraldo I believe. Yes, Caesar Geraldo. He
17 made payments to the -- of about \$40,000 to the private
18 institutions that Mr. Garcia Luna's children are going to.
19 Again, I think that was in -- I think that was recently in 2016
20 or 2017. And there have been other instances of another
21 corporation that was tied to this same corporation, the owners
22 of the same corporation that purchased the mansion and that
23 purchased the yacht. Another corporation tied to the owners of
24 that one also made a significant payment to a private school on
25 behalf of Mr. Garcia Luna. So what we're seeing here, Your

1 Honor, is that although Mr. Luna is claiming that he does not
2 have access to these assets, there is a pattern here of assets
3 in other people's names being used for his benefit which goes
4 directly to the question of bail here.

5 In addition, while we're on the topic of assets he
6 has access to, there is some discrepancy that the Government
7 would like clarified about whether or not Mr. Garcia Luna and
8 his wife continued to own Augie [Ph.] Café. According to Mr.
9 Garcia Luna's wife, this is a café that's in Florida that the
10 family has owned for the past few years. According to Mr.
11 Garcia Luna's wife, that was sold last year. According to the
12 accountant that works for Mr. Garcia Luna and his family, that
13 sale never actually went through and as far as he knew, the
14 family still owned the property. We spoke to the manager of
15 Augie Café today who indicated that as far as he knew, no sale
16 had been completed. He was not aware of whether -- he admitted
17 there could have been a sale without his knowledge. The last
18 he knew, the family continued to own the café. So we are
19 concerned, Your Honor, about the fact that Mr. Garcia Luna does
20 have access to assets. You know, I think whether or not he has
21 access to these assets I'm happy to go into further. It really
22 doesn't matter that much in terms of what it would take him to
23 actually flee. You know, I do find it hard to believe that
24 he's coming into court saying that he has \$4 million worth of
25 properties but that he doesn't have access to any cash. But

1 even if we are to assume that that is true, what we're talking
2 about in terms of flight here is him getting into a car and
3 driving to the Mexican border that he knows he can cross
4 without travel documents. Or getting into a boat, perhaps the
5 yacht that he had bought for him for \$700,000 and taking a boat
6 to a different country that doesn't have extradition or to
7 Mexico where he could then flee. So it's not like this will
8 take a significant amount of assets for him to actually flee,
9 Your Honor. And once he's in Mexico, it's the Government's
10 position that either his family members, he has extensive
11 extended family there, or his web of former corrupt officials
12 who he worked with who are his co-conspirators in this case, or
13 the [inaudible] cartel will shield him. And this happens
14 repeatedly in Mexico where fugitives are shielded from justice.

15 MR. ROBOTTI: Your Honor, excuse me, I do have some
16 specific issues with the suretors too which I'm happy to go
17 over.

18 THE COURT: Yes, why don't you? And then I'll let
19 the defense speak after that.

20 MR. ROBOTTI: So with respect to Caesar Geraldo, I'm
21 interested to know if defense counsel has actually spoken to
22 him. The Government has been trying to contact Mr. Geraldo for
23 well over a month. He hasn't answered his phone once. We
24 tried him yesterday, we tried him today. Travel records show
25 that he last left the United States last year. He was

1 scheduled to come back to the United States on January 26, 2020
2 on a flight back from Cancún. He was not on that flight. So
3 as far as the Government knows, he's not in the United States
4 and shouldn't be considered as a suretor unless the defense can
5 come forward with some information otherwise.

6 Andres Miro [Ph.], Your Honor, it's the position of
7 the Government that, you know, someone with an income of about
8 \$60,000 is not a sufficient suretor in this case for a \$1
9 million bond. The same thing with Paula Perez. She makes
10 about \$25,000 per year. Again, it's hard to see how someone
11 making that amount of money would be able to satisfy a \$1
12 million bond. So therefore, we think there's little assurance
13 here.

14 And then with respect to the remaining suretors, Your
15 Honor, and I think this is important here to consider when we
16 are thinking about the structure of this package, these
17 suretors really don't have any financial stake here. These
18 suretors have no skin in the game for whether Mr. Garcia Luna
19 is going to show up or not.

20 THE COURT: You mean there's no property posted?

21 MR. ROBOTTI: Well, the property -- there's property
22 being posted. It's Mr. Garcia Luna's property --

23 THE COURT: Right.

24 MR. ROBOTTI: -- of about \$1 million. And it's a \$1
25 million bond. And this property which we talked about before

1 is likely subject to forfeiture when he's convicted anyway. So
2 I don't think that his property offers any real incentive for
3 him to stay in the United States. But just holding out what
4 will happen here if Mr. Garcia Luna in fact absconds is that
5 the Government is going to forfeit the \$1 million property and
6 the rest of the suretors are going to be off the hook. They
7 don't have any financial risk here. So I don't see how them
8 signing this bond is offering the Government or the Court any
9 assurance that he's going to show up. And in fact, when we
10 spoke to Mr. Ramirez this afternoon he indicated that if this
11 property, Mr. Garcia Luna's property was not being put up, he
12 would not sign this bond because he said frankly I don't have
13 \$1 million to pay. So you know, it's the understanding of
14 these suretors that they're not going to have to pay because
15 this property is going to be forfeited. So I don't think that
16 the suretors offer any additional assurance to the Court that
17 he's going to show up besides the mere posting of this property
18 which as I said Mr. Garcia Luna is going to be more than
19 comfortable walking away from that property because he knows
20 he's going to lose it in any event if he's convicted.

21 So Your Honor, we think that this package for those
22 reasons is wholly inadequate and we also think that this
23 particular defendant has serious credibility problems which
24 should lead the Court to be incredibly skeptical of his
25 assurance that he's going to show up to court as he's supposed

1 to.

2 THE COURT: All right. Thank you."

3 MR. DeCASTRO: So what can I address first if there's
4 a particular order the Court would want?

5 THE COURT: Up to you.

6 MR. DeCASTRO: There's a lot there. I guess I'll
7 start with what they started with which is his home in Florida
8 that they're talking about which is 274 South Island, Golden
9 Beach, Florida. The claim is that he picked it out, they
10 purchased it for him, some shell company I guess. The
11 Government knows that it was purchased by this company that is
12 not owned by Mr. Garcia Luna. They know who owns it. They're
13 real people, they're real individuals and they have a real
14 business. In fact, what I said yesterday said that the Garcia
15 Lunas were renting that property. What was my basis of that?
16 I didn't pull that out of thin air. I was looking at a
17 residential lease agreement. And that residential lease
18 agreement is between that company and the defendant's wife and
19 it has the exact address of the location and how much the rent
20 is. I can provide that to the Court if they want. The
21 Government has this because this was on Mr. Garcia Luna's
22 laptop that they seized at the time of his arrest and which
23 that he provided the password to, did not make them go get a
24 warrant. He said here, you can have it, go ahead and look.
25 All these documents are there. So that's the basis that they

1 wanted to start with, what is my basis for saying that?

2 There's my basis. That house did have a boat on it that is
3 owned by that company. That company said here, you can -- his
4 employers are saying you can live in this house. You can live
5 in this house and it's with rent. There are times where that
6 rent would not be charged monthly because they owe him money
7 from work being done. He was employed and working very hard.
8 So that's the issue with the home.

9 The issue -- well, first I'd like to start with
10 instead of the Government asking me questions, I'd like to just
11 point out to the Court what happened since yesterday. So
12 obviously there was an issue that the Government came in here
13 with and said oh look, two suretors, they're no longer
14 available. They don't want to do it. Okay. And I said to the
15 Court, you know, this was strange, I was getting mixed
16 messages. So went back to my office and counsel finally
17 returned my call. We had a long conversation. He counseled
18 his client into the conversation. We had a conversation
19 regarding the surety issue. And so that cleared up. That
20 lawyer immediately emailed the Government saying they are
21 willing to cosign the bond. In fact, they are here today
22 sitting in the front row. Both of those people are here this
23 morning on a drop of a dime to come here to clear up that
24 issue.

25 I then reached out because I understood to have

1 backup I said well, let's just have every cosigner possible,
2 what we can present to this Court, they're willing to sign a
3 bond. Members of his community living in Florida, these are
4 people that are friends of the family, people that work around
5 him, with him. They're friends and they're willing to sign.
6 The Government has issues with some of those suretors because
7 they don't make enough money. Well add it up, they make over
8 \$1 million annually together. So first -- so we cleared up
9 that issue. I provided the names, the phone numbers, the
10 relationship to Mr. Garcia Luna, every person and email about 3
11 o'clock, 3:30, 4 o'clock yesterday to Pretrial Services. I
12 talked to the Government on that information and I said they're
13 all ready to be interviewed, whatever you want. The response I
14 got from Pretrial was please have them fill out a suretor
15 declaration form. I immediately went, got a suretor
16 declaration form filled out for everyone except the two
17 individuals that are here today because I hadn't spoken to
18 counsel about that issue. That was all done. I've been
19 forwarded to Pretrial Services the Housing and Urban
20 Development closing statements, or HUD statements, for the
21 three properties that Mr. Garcia Luna is prepared to offer, a
22 combination of which I don't think all three are necessary, but
23 we're willing to put up all three. The Court should have HUD
24 statements on all three. I sent them also to the Government.
25 So I'd like -- and so one of the -- so that means

1 that I propose the original four suretors plus the six more,
2 three of which are moral suasion, all of which Pretrial
3 Services has indicated a suitable surety in terms of either
4 moral suasion or just a suitable surety.

5 So one of those suretors I might add is a former FBI
6 agent. The Government has spoken to that person today. He is
7 willing if necessary -- one of the questions that Pretrial had
8 for me yesterday was are there any properties that are owned by
9 someone else that you could put up? My answer was I don't
10 that's necessary. However, I endeavored to speak to the
11 proposed suretors and that former FBI agent indicated sure, I
12 have a property, it's worth \$300,000, I'd be willing to put it
13 up. I have the address of that property. I don't have yet the
14 documents of it because I've just been speaking to him this
15 morning or this afternoon about it. But that is available.

16 THE COURT: Is it a residence or a business property?

17 MR. DeCASTRO: It's a residence I believe.

18 THE COURT: Where he lives?

19 MR. DeCASTRO: I think it's a rental income
20 residence.

21 THE COURT: A rental income.

22 MR. DeCASTRO: I'm not 100 percent sure.

23 THE COURT: And what's the value?

24 MR. DeCASTRO: About 300,000 I believe. Maybe a
25 little -- he said maybe a little shy of 300 depending on the

1 market.

2 Now, addressing a couple of the things that the
3 Government raised, the issue of the restaurant. I mean first
4 of all, I take a little bit of issue in this being a discovery
5 exercise but fine, the restaurant issue, my understanding is
6 that it was sold. It was sold -- and my understanding is based
7 on the same understanding they have. I spoke to the accountant
8 as well. I know exactly what's going on. I know that the
9 Government has subpoenaed the accountant. He shared that with
10 me and the details of the subpoena. And so what I was informed
11 was that he doesn't know yet about booking that. His
12 understanding he was told that it was sold. He's just working
13 on getting the documents in order to [inaudible] Mr. Garcia
14 Luna's been arrested.

15 THE COURT: He's the accountant?

16 MR. DeCASTRO: He's the accountant, yes. So he could
17 not give me any clarity on that in terms of -- his
18 understanding was that it was sold but he has an accountant for
19 that.

20 THE COURT: Did he say how much it was selling for?

21 MR. DeCASTRO: No. I can find out though.
22 [Inaudible] if the Court wants me to.

23 MR. ROBOTTI: Your Honor, just on that point, my
24 understanding from the accountant is there may have been some
25 contracts signed but the deal fell through and no money was

1 ever transferred in connection with the sale.

2 MR. DeCASTRO: They're mistaken. I think they're
3 mistaken on that. I think the Government is in the middle of
4 their investigation. They can't just assume the worst. That's
5 not my understanding. They assume that he wasn't renting a
6 property and I have a lease. So --

7 MR. ROBOTTI: Just on the rental point, the point I
8 made earlier was not about whether he was paying rent or not.
9 I think it's perfectly plausible that he was paying rent to try
10 to cover the fact that he had this house purchased for him. My
11 point was that he told the Government during his post arrest
12 interview that he was living there rent free and that
13 materially contradicts what counsel is saying here today.

14 MR. DeCASTRO: First, I think that's not what he
15 said. I think that they are trying to make something black and
16 white that is not black and white.

17 You know, so the other issue is the Government's
18 disbelief that he has no cash available. They don't believe
19 it. But they don't give you any evidence that he has cash
20 available to him. I have provided you with specific evidence
21 of that and that he's blocked from the financial system in
22 Mexico. He cannot sell his property. I don't think the
23 Government is going to deny that they are not willing to tell
24 any proposed purchaser of property that they are not going to
25 seek it from forfeiture, but they have not said whether they

1 will or not. No one is buying the property with that
2 potential, even potential. They continue to say that he has a
3 web, there was a web of former corrupt officials. Let me
4 repeat what I said yesterday which is the Government cannot
5 just ask for a human being to be detained without bail, to be
6 deprived of his liberty and just say it's because we think
7 there's this web out there of people that will help him and
8 then say who they are and try to identify for this Court these
9 are the people that we know are going to help him. Of course
10 assuming the absurdity that he's somehow going to walk to Texas
11 and walk over the border or get into a vehicle over the border,
12 there is -- with location monitoring that's not happening.
13 Okay? He's not leaving his wife and children here. He's not
14 leaving his life that he built here. The Government says
15 there's no risk to any of the suretors, no risk at all. So
16 then they should just say don't put up the property. There's
17 tons of risk to the suretors. And I bet you many of them are
18 willing to sign still because I spoke to almost all of them
19 that understand. And the reason they understand is because
20 these are members of this community. The Government wants to
21 attack people as improper suretors who work in a restaurant,
22 that manage the restaurant that [inaudible] own. These are
23 people that know the family. They know the family. They are
24 willing to do it because this is their community, these are
25 their friends. Right? He's not going to want to leave this

1 group of people holding the bag. This group of ten suretors
2 includes his family. He's going to leave his wife, his two
3 children who are in college here in the United States who are
4 starting their -- who we hope are starting their career very
5 soon? All of his friends? He's going to leave them holding
6 the bag? I just don't see it happening. And the Court can
7 certainly impose conditions that can assure his appearance. I
8 think that addressed [inaudible].

9 I mean I guess the only thing I should say is, you
10 know, the Government has his passport and his green card. Why
11 do they have that? Not because someone asked him to, he gave
12 it to them. So they arrested him, they seized him, they can
13 have it. They have it. It's in place. So they know exactly
14 where one of the suretors has been going. They know where he
15 is, they know when he's scheduled to fly. He's not going
16 anywhere.

17 MR. ROBOTTI: Judge, just to address a few points, I
18 mean short of the fact that he doesn't have the green card or
19 the passport is going to prevent him from getting on a flight
20 to Mexico, of course. But there's other ways to get out of the
21 country. And one of the way -- I spoke to a Border Patrol
22 agent this morning who said to me that he can drive across the
23 border without showing any documents. So it's not hard to get
24 into a car and drive from Florida to the border in Texas. It's
25 within a day. On top of that, he can get on a boat, take the

1 boat outside the country. We can't stop him. And electronic
2 monitoring has its limitations, Judge. Sure we would ask for
3 him to be on a bracelet but he can slip that off and be gone
4 before we even know about it.

5 You know, in terms of the package that's been
6 proposed, I would point out that, as I said before, the
7 properties that Mr. Garcia Luna is offering to put up are
8 meaningless. They offer no assurance here that he's going to
9 show up because those properties are going to be subject to
10 forfeiture in any event. And my understanding from speaking
11 with the two suretors who are in court today, or at least Mr.
12 Ramirez, he is not willing to sign the bond without those
13 properties. So I think that we need to take that into
14 consideration here when we're looking at this proposed package
15 because as I said before, the suretors don't in fact have any
16 financial stake in this package right now. All Mr. Garcia Luna
17 has to be willing to do is give up these properties, flee to
18 Mexico and give up these properties that he's going to lose
19 anyway. I bet that he's willing to do that to avoid going to
20 jail for potentially the rest of his life.

21 In terms of his ties to the community, Mr. Garcia
22 Luna up until 2012 had spent his entire life in Mexico. His
23 family, his extended family is there. His family that resides
24 in the United States right now also are Mexican citizens.
25 Easily leave the United States as well if their father is going

1 to avoid spending potentially the rest of his life in United
2 States custody. So I think these are things we need to be
3 looking at seriously here which are his ties back to Mexico and
4 the lack of significant ties that he's had in the United States
5 up until 2012.

6 In terms of the corrupt officials that will assist
7 him, as Your Honor knows, we're not going to stand up here and
8 name officials that are under investigation. There's a DOJ
9 policy against naming unindicted co-conspirators. But we are
10 entitled to stand up here and proffer based on our
11 investigation and interviews with numerous other cooperating
12 witnesses that Mr. Garcia Luna was connected to an entire web
13 of corrupt officials who were being paid off by the [inaudible]
14 cartel. Many of those officials are still in Mexico. Many of
15 them still hold powerful positions in the private sector. And
16 they would be willing, we believe, to facilitate his flight
17 from justice if nothing else to avoid a public trial where
18 their names will come out on the record.

19 And on top of that, Your Honor, you know, I think
20 we've gone back and forth about whether or not he still has
21 title to this company, the Augie Café. I think it is important
22 to know whether or not, they should be able to answer whether
23 or not that is still their asset. If they do still have access
24 to that corporation, you know, it is an ongoing concern, it is
25 a business that is still operating and that is another source

1 of assets that he could be using here. But again, just
2 stepping back, Your Honor, I think the assets question whether
3 he has access to it or not, you know, I just don't want to lose
4 sight of which I do think is a critical point is it doesn't
5 take a lot of money for him to flee. He has an extensive
6 network in Mexico, legitimate and illegitimate. And I think
7 he's going to be able to take advantage of that to get out of
8 the country.

9 MR. DeCASTRO: Judge, if I could just on --

10 THE COURT: Let me just ask a question. I think I
11 asked it yesterday but if the suretors had posted property,
12 would that change your view?

13 MR. ROBOTTI: No, Your Honor. It's the Government's
14 position that there's no package that is sufficient here. But
15 certainly this package is not sufficient.

16 THE COURT: Okay. So think back to the
17 [indiscernible] prosecutions, and I don't know if they're
18 exactly analogous but I was trying to think of some analogous
19 situation where there were people who were high officials in
20 foreign governments who had been accused of either taking or
21 giving bribes and who came to the US and many of them were
22 released on bond, not all, but many of them were. How would
23 you describe the difference between this defendant and those
24 defendants? If you know. If you're familiar enough with those
25 cases.

1 MR. ROBOTTI: Sorry, Judge, offhand I don't know all
2 the details of the bond packages in the [indiscernible] case.
3 I try to keep up on all the office's prosecutions but I can't
4 say that I'm intimately familiar with what happened there.

5 THE COURT: Yes. Because I had a number of those
6 before me and there were many, many, many people released on
7 substantial bonds who had holdings and extensive ties in other
8 countries. I suppose some of the differences would be that
9 they came and self-surrendered in the US. Some of them did.
10 But there are some similarities to this defendant. I suppose
11 the other question would be whether or not there's -- what you
12 describe as -- whether there was what you describe as a web of
13 corrupt officials who would have protected them had they gone
14 back to their country and fled. So that may be the difference.
15 I'm not sure.

16 MR. ROBOTTI: And I do think we have to be looking at
17 this particular defendant here, Your Honor. I don't know what
18 property was posted. I don't know what suretors were involved,
19 what would be the case. But looking at this particular package
20 that's being offered here, especially when this property that's
21 within the United States that he's offering to put up, this \$4
22 million, as I said, that doesn't carry any weight at all, so
23 we're basically left with, you know, his ability to just give
24 up these forfeitable properties if he's willing to flee to
25 avoid a life sentence. I just don't think that's sufficient

1 here, Judge. Nobody has any stake in this.

2 THE COURT: All right. Thank you.

3 MR. DeCASTRO: So Judge, I guess let me address that
4 issue. The Government talks to you on forfeiture issues as if
5 they won at trial. We're talking about substitute assets that
6 they say they are going to seek when they win a trial. We are
7 at the early stages of a trial. Mr. Garcia Luna is presumed
8 innocent. He is fighting these charges. Yet the Government
9 acts as if he's pled guilty already or they've proven him
10 guilty or -- excuse me. So first of all, there's that. And to
11 say that he doesn't have -- it's meaningless is based on what I
12 don't know. These properties are his. They're his retirement
13 essentially and they are worth a lot of money. It's not just
14 one property as I said. The potential for three if the Court
15 wants that.

16 In terms of him just getting on a boat, number one,
17 as I think I indicated to Pretrial a number of times, that he
18 would reside in Washington, DC. He would not be residing in
19 Florida. But he would be residing with his wife who is living
20 with their daughter in college, in her college apartment.
21 They're living together. They would reside in Washington.
22 Should the Court want him to rent an apartment here in New
23 York, he would do that if it was necessary. He's not going to
24 be on the border. He's not walking across, jumping in a car.
25 You know, we're talking about days and days of travel. And you

1 know, on Fifa [Ph.], I'm a little familiar with some of the
2 defendants in Fifa. I don't think a single defendant -- I'm
3 not aware of any single defendant who was released fleeing in
4 that case either. So I don't think that would be the case here
5 as well. And I do think the Government made allegations that
6 they have all these connections all abroad and they're all very
7 high level officials. None of those people came [inaudible].
8 His ties to the community are strong. This is where he wanted
9 to make his life. His family is here. They have remained her
10 since his arrest. They're living in Washington and the son is
11 not in Washington but they are all United States citizens, all
12 three of them. And so I don't see how the drastic remedy of
13 detention is appropriate here.

14 MR. ROBOTTI: Judge, you know, again, it's hard to
15 talk about Fifa without knowing the specifics, but I can
16 guarantee that the people who were detained in Fifa didn't flee
17 and that's what we should be doing here.

18 In terms of the forfeiture, Judge, I think these are
19 potentially substitute assets but the point is what we're
20 looking at in terms of incentives to stay in the United States.
21 And if somebody's sitting here and saying if I stay in the
22 United States is a good chance that I lose these properties,
23 these \$4 million properties, there's a good chance I go to jail
24 for the rest of my life, or I can just give up those properties
25 that I'm likely to lose anyway and go to Mexico, I think that

1 there's a strong incentive to go to Mexico rather than stay in
2 United States with respect to those properties. So that's the
3 point where making is that these properties he's offering to
4 put up don't give an incentive to stay here because they're
5 likely to be forfeited anyways.

6 MR. DeCASTRO: And Judge, and ruin the lives of ten
7 of his closest friends.

8 MR. ROBOTTI: But that's not true. That's not
9 accurate under this bond. Under this bond, the \$1 million
10 property would be forfeited and all these other suretors would
11 be off the hook. They don't have any financial stake in this.

12 MR. DeCASTRO: So then remove the properties and
13 people will sign. Mr. -- as I indicated, the former FBI agent
14 would put up his house. And do a combination and he'll put up
15 his home. I don't see what the issue is.

16 THE COURT: That's Mr. Villar [Ph.]?

17 MR. DeCASTRO: Yes.

18 THE COURT: Would any of the other suretors put up
19 their property, their homes?

20 MR. DeCASTRO: I don't think they own homes.
21 Properties that [inaudible] available [inaudible]. I believe
22 that home is also owned outright.

23 THE COURT: Right. As I was looking at this, there
24 was one thing that was missing to me was there wasn't any real
25 property that the suretors themselves were posting, residences

1 that they lived in that if he fled they would lose. That's a
2 strong incentive. A rental property is an investment. It's
3 something different.

4 MR. DeCASTRO: But as the Government has pointed out
5 to suretors, or at least as they've reported to me, that it's
6 not. They're saying that now in court. They're saying to
7 suretors that well no, well if we're forfeiting those
8 properties then you're going to be on the hook for that money,
9 for that \$1 million bond. So it's not nothing. And they've
10 all been informed of that that yes, the property might be split
11 up but if the Government is correct that they are going to
12 forfeit that property, they will be on the hook. They will be
13 on the hook. That's -- I've been clear to say that to them.
14 It's not just oh yeah, don't worry, sign because there's
15 property. That's not what the message has been. That's not
16 [inaudible].

17 THE COURT: Well, how are they on the hook? I mean
18 their wages could be garnished over a period of time, 10
19 percent, whatever the percentage is.

20 MR. DeCASTRO: The Government could move on any of
21 their property they had, right? And I mean in my experience,
22 the Government when they go after a bond, they go after that
23 bond. That's why it's very, very difficult for the person's
24 loved ones.

25 MR. ROBOTTI: But practically speaking, Judge, if

1 there is a \$1 million property tied to this bond --

2 THE COURT: Right, they'll go after that first.

3 MR. ROBOTTI: -- the defendant flees, the Government
4 is going to forfeit that \$1 million property and the bond will
5 be satisfied. Therefore, all these other suretors, their lives
6 aren't going to be ruined as defense counsel says. They're
7 going to be off the hook.

8 THE COURT: How much is Mr. Luna's property worth?

9 MR. ROBOTTI: My understanding is that there's about
10 \$4 million worth of properties.

11 THE COURT: Would your concerns be alleviated if the
12 bond were \$5 million?

13 MR. ROBOTTI: No, Judge. I mean I think we have the
14 same concerns. I mean the property is, again, \$4 million of
15 properties don't matter because he's going to be willing to
16 give up those properties because he knows he's likely to lose
17 them anyways. In terms of the additional \$1 million, it's one,
18 not clear to me that any of these suretors are going to sign
19 under those circumstances but I think the defense has an
20 obligation to have figured that out and come back to the Court
21 with a package that indicates who's willing to sign in the
22 absence of these properties. On top of that, I do think that
23 most of these suretors cannot satisfy a \$1 million bond. And
24 look, the one person who is potentially offering property lives
25 in Utah. He doesn't see the defendant and his family very

1 often. It's not clear to me at all that the defendant is not
2 willing to leave him holding the bag to avoid a potential life
3 sentence.

4 THE COURT: Okay.

5 MR. DeCASTRO: So someone who has served the
6 Department of Justice as an agent, is retired and still
7 working, told me today this morning he had no problem, whatever
8 you need because I trust him, I know him, I've worked with him.
9 He is a good honest person. What's happening to him is unfair
10 and unjust. Whatever you need from me, just let me know. You
11 know, I don't think that's a person that -- and the only reason
12 I know about that person is from my client. And so, you know,
13 the Government's suggestion if the Court set a \$5 million bond
14 [inaudible] oh no one's going to sign. Well, you know, just to
15 say give it more time, give it more time so that he can stay
16 detained, we could try to jump through some more hoops and
17 figure it out and they'll just keep saying detention anyway is
18 just not fair. It's just not fair. It is not what the Bail
19 Reform Act talks about.

20 MR. ROBOTTI: It is, Your Honor. It's a presumption
21 case.

22 THE COURT: It's not whether or not the Government
23 agrees. I mean that would make life easier for you if the
24 Government agreed. It's whether or not the Government's
25 argument that there would be no pain suffered by the suretors

1 would be [indiscernible].

2 MR. DeCASTRO: So I think your solution, I mean it
3 would be the Court's solution, you know, if -- and you can ask
4 the suretors, and my understanding is they would, from my
5 conversations with them, that most if not all would sign the
6 bond. Even if four decided not to sign the bond, you have six
7 people signing the bond. I can't remember the last time I've
8 had more than five people sign the bond in this court or the
9 Southern District.

10 MR. ROBOTTI: Well, Your Honor, let's talk about what
11 that means. So three of those people would be the defendant's
12 family who do not have any assets different here --

13 THE COURT: Well, that depends who signed it.

14 MR. ROBOTTI: And then depending on who the other
15 three are, I mean the other couple then who clearly cannot meet
16 any financial eligible requirement here -- and just with
17 respect to the suretor in Utah, I'm sure he had lots of nice
18 things to say about Mr. Garcia Luna but he obviously doesn't
19 know all the evidence that the Government has about Mr. Garcia
20 Luna's extensive crimes over the last 20 years. So I don't
21 think that that really adds much value here. And I do think
22 that somebody who's facing a potential life sentence may be
23 willing to leave an acquaintance behind holding the bag for a
24 \$300,000 property to avoid that jail sentence.

25 So look, Your Honor, this is a presumption case. The

1 burden is here, is on the defense in the first instance to come
2 forward with a package that rebuts that presumption. Right now
3 we have a lot of speculation that even if these properties were
4 not put up by Mr. Garcia Luna that some people might be willing
5 to sign this bond. We don't have anything concrete about that.
6 Yet either way, it is the Government's position that the bond
7 is not sufficient here. But certainly in these circumstances
8 here the defense has not rebutted the presumption.

9 THE COURT: And which suretors are here today?

10 MR. DeCASTRO: Mr. Ramirez, Ms. -- I mess up her last
11 name, [indiscernible], and the defendant's wife and father
12 also.

13 THE COURT: Okay.

14 MR. DeCASTRO: All are available by phone because
15 they're all in different places. In this one issue, I just
16 don't understand why the Government is hammering on this as if
17 all the suretors have to -- they have to be financially
18 responsible. They don't have to be able to get \$1 million from
19 them to [inaudible] where it has to be fully secured.

20 MR. ROBOTTI: Well, of course, Your Honor, a \$1
21 million bond is meaningless if there's no way to satisfy it.

22 THE COURT: Well, except that it would present an
23 obligation to the signers that could potentially go for the
24 rest of their lives.

25 MR. ROBOTTI: Of course, Judge, but the likelihood of

1 the Government recovering \$1 million is of course very minimal.
2 And you know, if somebody realizes they're going to be on the
3 hook for 10 percent of their wages for the rest of their lives
4 versus actually having to pay \$1 million, that's a different
5 incentive.

6 MR. DeCASTRO: I don't know anyone anywhere that
7 wants to have their wages garnished when people have to pay
8 their bills.

9 THE COURT: Okay. All right. I'm going to reserve
10 decision. I'm going to think about this. I'll take a short
11 recess. I may or may not want to speak to the suretors. But I
12 think we have a couple of other cases to do at this point.

13 MR. ROBOTTI: Okay. Thank you, Judge.

14 MR. DeCASTRO: Stick around?

15 THE COURT: Yes, stick around.

16 (Off the record at 3:41 p.m.)

17 (Back on the record at 4:32 p.m.)

18 THE CLERK: Second call for case No. 19-CR-576, US v.
19 Garcia Luna. Counsel, please state your appearance for the
20 record.

21 MR. ROBOTTI: Good afternoon again, Your Honor.
22 Michael Robotti for the United States.

23 MR. DeCASTRO: Cesar DeCastro for Mr. Garcia Luna.
24 Good afternoon.

25 THE CLERK: Previously sworn Spanish interpreter also

1 present.

2 THE COURT: All right. We've had three sets of
3 arguments in this case and counsel on both sides have presented
4 what I think are strong arguments. This is not an easy case.
5 It's a case where I believe that reasonable people could
6 disagree. Pretrial Services has recommended that there are no
7 conditions or combinations of conditions that will reasonably
8 assure the appearance of the defendant as required and the
9 safety of the community and recommends detention. The
10 Government also takes that position and the defense believes
11 that there are reasonable conditions and combinations of
12 conditions that could ensure his return to court.

13 I don't see this as much as a danger to the community
14 argument as a risk of flight argument that's the key issues
15 here. I don't go as far as the Government does to say that
16 there are no conditions or combinations of conditions that
17 could ensure his return. Similarly, I don't agree with
18 Pretrial Services to that extent although I think I understand
19 the position. I've looked at the factors under the Bail Reform
20 Act, the nature and characteristics of the defendant, the crime
21 charged, the evidence, et cetera, et cetera and I've looked at
22 the package very carefully and I'm not going to go through all
23 the reasons and the arguments that both sides made. I think
24 the record's pretty clear on that. Ultimately, my view is that
25 this package is not strong enough at this point to ensure his

1 return to court. And there are a number of reasons why, but I
2 think what particularly is troubling about the package is that
3 it relies solely on income but not on assets. And residential
4 assets, assets that would actually cause some kind of pain to
5 the individual that's greater than mere garnishment of wages,
6 particularly as the Government noted after a house would have
7 been confiscated and used to pay the amount of the bond. So
8 that's a brief summary of my reasons I think the bond is not
9 strong enough. I'm not saying that there are no conditions
10 that could ensure his return to court, but this bond doesn't
11 quite do it. So that's my ruling.

12 MR. DeCASTRO: I [inaudible].

13 MR. ROBOTTI: Thank you, Judge.

14 MR. DeCASTRO: Your Honor, if, for example, we were
15 to put up some residential properties, can we come back to
16 court or do we --

17 THE COURT: You can always come back to court any
18 time to be heard. Right.

19 MR. DeCASTRO: Right. I mean do we come back to Your
20 Honor or do we start this process all over again?

21 THE COURT: Whoever's on duty at the time you come
22 back to. But if whoever's on duty is asked what my ruling was,
23 my ruling wasn't that there's no combination of conditions.
24 It's that this package was troubling for the reasons that the
25 Government mentioned and for the particular fact that there's

1 not any solid assets behind it. I don't see a rental property
2 as being the kind of asset that would make me comfortable. But
3 again, another judge may see it differently.

4 MR. DeCASTRO: Thank you, Judge.

5 THE COURT: Okay.

6 MR. ROBOTTI: Thank you, Judge.

7 THE COURT: All right. Thank you.

8 (Proceedings concluded at 4:36 p.m.)

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

4
5 *Mary Greco*

6 _____
7 Mary Greco

8 Dated: March 23, 2020
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